

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

MICHAEL LEE GORDON,

Petitioner,

v.

**CASE NO. 2:01-CV-1166
CRIM. NO. 2:97-CR-167(6)
JUDGE GRAHAM**

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

On February 1, 2010, this Court denied Petitioner's motions for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b). Doc. No. 412. This matter is before the Court on Petitioner's March 24, 2010, notice of appeal, which this Court construes as a request for a certificate of appealability. For the reasons that follow, Petitioner's request for a certificate of appealability is **DENIED**.

Where the Court dismissed a claim on procedural grounds, a certificate of appealability "should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling."

See Slack v. McDaniel, 529 U.S. 473, 484 (2000)(recognizing codification of *Barefoot* in 28 U.S.C. § 2253(c)(2)). To make a substantial showing of the denial of a constitutional right, a petitioner must show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack*, 529 U.S. at 484 (quoting *Barefoot*, 463 U.S. at 893 & n.4).

Thus, there are two components to determining whether a certificate of appealability should issue when a claim is dismissed on procedural grounds: “one directed at the underlying constitutional claims and one directed at the district court’s procedural holding.” *Id.* at 85. The court may first “resolve the issue whose answer is more apparent from the record and arguments.” *Id.*

Petitioner has failed to establish that reasonable jurists would debate the Court correctly dismissed his motion for relief from judgment pursuant to Rule 60(b). Petitioner’s Rule 60(b) motion was untimely. Additionally, Petitioner failed to raise any basis for granting relief under Rule 60(b). His request for a certificate of appealability therefore is **DENIED**.

IT IS SO ORDERED.

1/17/2013



JAMES L. GRAHAM
United States District Judge